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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/837,526	04/18/2001	Robert Uskali	PD05962AM	8197

22917 7590 11/07/2005

MOTOROLA, INC.
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SCHAUMBURG, IL 60196

EXAMINER

FISH, JAMIESON W

ART UNIT	PAPER NUMBER
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2617

DATE MAILED: 11/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/837,526

Applicant(s)

USKALI ET AL.

Examiner

Jamieson W. Fish

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 September 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

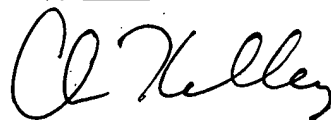
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Detailed Action.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.



CHRIS KELLEY

SUPPLEMENTARY EXAMINER

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 9-26-2005 have been fully considered but they are not persuasive. The applicant argues that (1) With respect to claims, "Vogel does not suggest to use the wideband scan to direct the area of focus for the narrowband scan". (2) With respect to claim 10, Vogel does not perform a Fourier analysis, (3) With respect to claims 1, Vogel and Bailey in combination do not meet the limitations of claim 1.

In response to applicant's argument (1) that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "use the wideband scan to direct the area of focus for the narrowband scan") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The claims recite "identifying power containing regions of a downstream signal with a relatively coarse power spectrum scan wherein each step of the scan covers about a 6-8 MHz portion of the downstream signal." Vogel teaches tuning a F_{VC} to the lower edge of a 6 MHz channel (See Col. 14 lines 16-38, Fig. 7 Step 302). This action can be interpreted as a relatively coarse power spectrum scan wherein each step of the scan covers about a 6-8 MHz portion of the downstream signal. After this measurement Vogel teaches taking another measurement within the 6 MHz channel. (See Col. 14 lines 16-38, Fig. 7 Step 306). This can be interpreted as "performing a relatively finer power spectrum scan on the power containing regions."

In response to argument (2), contrary to the applicant's beliefs the interpretation of a "Fourier analysis" is consistent with the interpretation that those skilled in the art would reach. Although "Fourier series" and "Fourier transform" have precise mathematical definitions, the result of these operations is the representation of a signal in the frequency domain. Thus, in practice, a "Fourier analysis" would reasonably be interpreted as characterizing a signal based on its' frequency domain representation. Measuring the power of a signal at different frequencies to generate a spectral profile would be one way to characterize a signal based on its' frequency domain representation.

In response to argument (3), the examiner only relies on Bailey to teach that is generally well known "to search for a signal with a wideband receiver and, once having detected a signal, to tune to that signal with a narrow band receiver." Searching with a wideband to detect a signal is analogous scanning a downstream signal at a first bandwidth to identify power containing regions in the downstream signal, since searching is essentially scanning and detecting is essentially measuring power. Arguments by the applicant that (a) the modification contradicts the very advantages Vogel hopes to achieve, (b) the combination has no reasonable expectation of success, and (c) that Bailey teaches away from such a combination are not persuasive. In response to (a), the general principle relied on in Bailey does not suggest demodulating a large number of channels as the remarks contend. Bailey only suggests tuning and detecting not demodulating. In response to (b), the combination does have a reasonable expectation of success. It is clear from discussions of Vogel, that Vogel can

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measure the power of a 6 MHz band of a signal (Step 310) and then take finer measurements within the 6 MHz band based on the result of the measurement (Steps 312, 302, 306). There is no reason why these measurements could not be taken in any order. In response to (c), this argument is base on the specifics of Bailey's invention. As stated above the examiner only relies on Bailey to demonstrate a general principle and not specific embodiments of his invention, thus any argument based on the specifics of Bailey's invention are unfounded.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamieson W. Fish whose telephone number is 571-272-7307. The examiner can normally be reached on Monday-Friday, 8:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on 571-272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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JF 11-02-2005